

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1562 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

SHAMJIBHAI LADHABHAI PATEL RESIDING AT MODASA, NEAR

Versus

CHANDRAVADAN AMBALAL SURA, HIM-SELF & P.A.O. HEIRS OF DECEASED

Appearance:

MR MD PANDYA for Petitioner

MR SR DIVETIA for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 03/03/2000

ORAL JUDGEMENT

In this petition filed under Article 227 of the Constitution of India the petitioner challenges the judgement and order of the Gujarat Revenue Tribunal dated 22.2.1980 rejecting the petitioner's Revision Application and confirming the decision of the Deputy Collector in

appeal in which it was held that the petitioner was not a tenant of survey No. 387 but a trespasser therein and therefore, he was not entitled to get the benefit of Section 17B(1) of the Bombay Tenancy and Agricultural Lands Act, 1946 in so far as dwelling house occupied by him on the said land was concerned.

2. The dispute involved in the present petition pertains to a dwelling house on the site which is a part of Survey No. 387/1/2. According to the petitioner, he was the tenant of Survey No. 386 and 486 which belonged to Chandulal. Earlier his case was that he was also the tenant of Survey No. 387. In Survey No. 387 there was a house and another structure which according to the petitioner was given to him for residence and keeping agricultural implements and storage of grass. In the earlier proceedings under Section 70(b) of the said Act which related to the question as to whether the petitioner was a tenant in respect of Survey No. 387, the petitioner had lost and was declared not to be a tenant on the ground that he was a trespasser. That finding came to be confirmed right upto the Supreme Court. The proceedings before the Supreme Court were filed against the decision of this court dated 30.1.1973 in Special Civil Application No. 773 of 1969. From the judgement in that petition it will be noted that the question involved in those proceedings as raised by the petitioner was that he was a tenant of Survey No. 387 (which was a compendious description of Survey Nos. 387/1 and 387/2 as noted in the judgement). His case was that a house and another structure standing on that site was given to him for residence. In those proceedings there was a reference to the fact that Survey No. 387 was divided and Ambalal had become the owner of a part of that land which was given survey No. 387/1/2 and was managing the other part which had fallen to the share of Chandulal. It was the petitioner's case that in 1957 Ambalal tried to disturb the possession of the petitioner through his servants and therefore the petitioner had to file a criminal complaint. The petitioner also filed Possessory Suit in the Mamlatdar's court. Thereafter Ambalal applied under Section 84 of the Bombay Tenancy and Agricultural Lands Act for summary eviction of the petitioner on 19.8.1958 but as it was held that such application was not maintainable, Ambalal and Chandulal filed two tenancy applications under Section 70(b) of the Act before the Mamlatdar for a declaration that the petitioner was not a tenant of the suit land. The Mamlatdar by his order dated 29.5.1959 held that he was the tenant. Thereafter, Ambalal and Chandulal filed an appeal before the Deputy Collector, Modasa who set aside

the order of the Mamlatdar and remanded the matter for fresh decision by his order dated 30.7.1960. On remand the Mamlatdar held that the petitioner was not the tenant of the suit land and gave a negative declaration to that effect. That order of the Mamlatdar was passed on 22.8.1961 and appeal being Appeal No. 19/1962 which was filed by the petitioner against that order before the Dy. Collector was dismissed on 25.1.1962. Ultimately that order of the Dy. Collector came to be confirmed by the Revenue Tribunal after some intervening remand by the High Court to Tribunal. That order was challenged by the petitioner before this High Court in Special Civil Application No. 773 of 1969 and was confirmed. Admittedly, a Special Leave Petition which was filed against that decision came to be rejected by the Supreme Court. Therefore, the petitioner was finally held to be not tenant of Survey No. 387, which included the site on which the dwelling house claimed by him in the present proceedings was situated, on the ground that he was a trespasser on that land. Thereafter, Civil Suit filed by the respondents on the basis of this declaration that the petitioner was not a tenant came to be decreed which decree was confirmed in appeal and the Second Appeal came to be withdrawn.

3. In the background of these facts, the learned counsel for the petitioner contended that the tenant was now not raising a question that he was a tenant of survey No. 387 or of the dwelling site thereon because that question has now been finally concluded. The contention that the petitioner now wanted to raise is that after coming into force of Section 17B of the Act on 2.5.1973 a right accrued in favour of the petitioner to be treated as the 'deemed purchaser' of the dwelling house which was occupied by him. It was contended on behalf of the petitioner that the judgement of the Tribunal proceeded on the footing that the petitioner had failed to establish that he was a tenant in respect of Survey No. 387. The Tribunal, according to the learned counsel, overlooked the fact that it was not necessary that a person should be a tenant of the agricultural land on which the dwelling house was situated. The learned counsel contended that even if the site on which the dwelling house stood was a part of the land of which a person was not a tenant, if he was a tenant of any other land belonging to the same landlord, he would still be entitled to the benefit of Section 17B of the Act. It was contended that the petitioner undisputedly was a tenant of other land, namely, survey No. 386 and 486 which belonged to Chandulal and before a portion of Survey No. 387 was given to Ambalal, Chandulal was the

owner of the entire Survey No. 387. It was therefore contended that since the petitioner was a tenant of other agricultural land belonging to Chandulal and had constructed dwelling house on the site which belonged to Chandulal being part of Survey No. 387, even after the declaration that the petitioner was not a tenant of Survey No. 387, the petitioner became, by virtue of Section 17B of the Act, entitled to be treated as the deemed purchaser of the dwelling house on the site of Survey No. 387. It was argued that if the petitioner was found to be in occupation of the dwelling house constructed at his own expenses on a site which belonged to Chandulal he was a tenant referred under Section 16 and therefore Section 17B of the Act could be invoked by him. It was argued that Chandulal could not in law cease to be the owner of the site of Survey No. 387 on the basis of the alleged oral sale transaction in favour of Ambalal because that would violate the provisions of sub-section (5) of Section 17 of the said Act which made any transaction of such site null and void. It was argued that Section 17(5) created an embargo on the right of the landlord from transferring the site over which tenant had built dwelling house at his own expenses. It was further argued that for deciding the claim under Section 17B the first question that would arise is whether the petitioner was the tenant of a landlord in respect of any of his agricultural land which need not be the agricultural land on which the house site was situated but which belonged to such landlord. It was contended that the next question that would arise for consideration of such claim was as to whether such tenant was in occupation of the dwelling house built at his own expenses on a site belonging to his landlord. It was contended that the purpose of the Act was to extend the benefit to tenants in respect of dwelling houses constructed by them on any site of the same landlord. The learned counsel relied on the decision in the case of NAVNITLAL VS. KESHAVLAL reported in 5 G.L.R. 315 for contending that the approach of the court should be to extend the benefit in favour of the tenant who had constructed a house on a site which belonged to his landlord. It was also contended that, in any event, since the Tribunal had not directed itself to the important consideration as to whether the tenant of other land of the same landlord can get the benefit of Section 17B of the Act of being treated as deemed purchaser of the dwelling house on the site which belonged to the same landlord, the matter should go back for reconsideration by the Tribunal.

4. Admittedly, the petitioner has been held to be a

trespasser and declared not to be the tenant of the entire survey No. 387 including the site on which dwelling house in question was constructed, in the proceedings under Section 70(b) of the said Act right upto the Supreme Court. The question in this background would be whether the provisions of Section 17B of the said Act after they came into force on 2.5.1973, conferred any right on the petitioner to become the 'deemed purchaser' in respect of the house site of which he was held to be a trespasser and not a tenant.

5. Section 17B(1) provides that on and with effect from such date as the State Government may, by notification in the Official Gazette, specify, every tenant referred to in Section 16 shall be deemed to have purchased from his landlord the site on which the dwelling house occupied by such tenant, was built and the land immediately appurtenant thereto and necessary for enjoyment of the dwelling house, free from all encumbrances, at the price to be fixed by the Tribunal, being a price not exceeding twenty times the annual rent for the site. Section 16 provides for a bar to eviction from dwelling house and lays down that if in any village, a tenant is in occupation of a dwelling house built at the expense of such tenant or his predecessor in title on a site belonging to his landlord, such tenant shall not be evicted from such dwelling house unless the landlord proves that it was not built at his expenses or by his predecessor in title and the tenant makes any three defaults in payment of rent, if any, which he was paying for the use and occupation of such site. Sub-section (2) of Section 16 provides that the aforesaid sub-section (1) shall not apply to a dwelling house which is situated on any land used for the purposes of agriculture from which he has been evicted under Section 31.

6. Section 17B came into operation on and with effect from the specified date which was 2.5.1973. The tenant referred to in Section 16 of the Act was to be deemed to have purchased the site on which the house was built and the land immediately appurtenant thereto from his landlord. This means that on the specified date such site should belong to the landlord. If the site no more belongs to his landlord on the specified date, there would be no question of his becoming deemed purchaser of the house site from his landlord, against whom further proceedings under Section 17B of the Act would lie for determining the price of the site. If the tenant is not willing to purchase the site on issuance of the requisite certificate the landlord would be entitled to evict the tenant as provided under sub-section (8) of Section 17B.

The provisions of Section 17B therefore clearly postulate that the house site should belong to the landlord of the tenant referred to in Section 16 of the Act, which also speaks of 'a site belonging to his landlord' and not a site which earlier belonged to his landlord prior to coming into force of the provisions of section 17B of the Act. Admittedly, in respect of the land of Survey No. 387 which included the house site in survey No. 387/1/2 the petitioner was held to be a trespasser upto Supreme Court and the declaration that he was not a tenant was upheld. The site on which the dwelling house was built being a part of that land, the petitioner was a trespasser therein also. There was, therefore, no question of the petitioner becoming the deemed purchaser of the site of which he was not a tenant and was finally adjudged to be a trespasser. Even as per his own deposition before the Revenue authorities the said land of survey No. 387/1/2 had gone to the share of Ambalal, and therefore there was no question of his being tenant of that land.

7. The contention that the transaction by which Ambalal is said to have become the owner before 1956, of survey No. 387/1/2 in which dwelling house stands was in violation of Section 17(5) of the Act was never raised till the arguments were canvassed before this court. All the proceedings hitherto undertaken proceeded on the footing that there was a transfer of a portion of 3 acres of land of survey No. 387, which was numbered as Survey No. 387/1/2, in favour of Ambalal and that position has never been disputed so far. Therefore, since the validity of such transaction had not been in issue it cannot be said that the Tribunal had committed any error in not considering an aspect which was never in issue.

8. In this view of the matter, there is no warrant for any interference with the impugned decision of the Tribunal. The Tribunal has based its decision on the relevant material on record and on cogent grounds, and acted in lawful exercise of its jurisdiction. The petition is therefore rejected. Rule is discharged with no order as to costs. Interim relief stands vacated.

00000

(pkn)